

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JAY MCCLAIN JR.,

Petitioner,

vs.

No. CV 20-01173 KG/KRS

UNITED STATES OF AMERICA,

Respondent.

**PRO SE PRISONER ORDER ON PENDING MOTION  
AND CASE MANAGEMENT ORDER**

THIS MATTER is before the Court on the Prisoner's Request for Telephonic Hearing (Doc. 3) filed by Petitioner, Jay McClain Jr. The Court denies the Request as premature.

Because Petitioner is a prisoner proceeding pro se, the Court is obligated to conduct a preliminary screening of his Petition. *See* Rule 4 of the Rules Governing Section 2255 Proceedings. Whenever a prisoner brings a proceeding seeking collateral review of a federal conviction or sentence, the Court is obligated to screen the Petitioner's motion. Rule 4 states:

“If it plainly appears from the motion, any attached exhibits,  
and the record of prior proceedings that the moving party  
is not entitled to relief, the judge must dismiss the petition  
and direct the clerk to notify the moving party.”

Any request to the Court for relief must be in the form of a motion. Fed. R. Civ. P. 7(b). The filing of excessive motions may cause substantial delay in completion of the Court's preliminary screening and resolution of the case. Petitioner should avoid filing unnecessary motions. Requests for service of process, discovery, expansion of the record, and submissions of

proof are premature and unavailable prior to the Court's completion of its screening obligation. *See Jones v. Bock*, 549 U.S. 199, 213-214 (2007).

Pending before the Court is Petitioner's Request for Telephonic Hearing (Doc. 3). The Court will deny, without prejudice, the Request for Telephonic Hearing as premature. If Petitioner's Petition is not dismissed on initial screening, the Court will enter further orders governing service of process, discovery, expansion of the record, appointment of counsel, and scheduling.

Petitioner should not send any letters to the Court other than transmittal letters or requests for information or copies. All mail relating to this case must be directed to the Clerk of the Court. Petitioner is not to send any mail directly to the assigned District Judge or the assigned Magistrate Judge. Petitioner also should not make telephone calls to or ask to speak to the assigned District Judge, the assigned Magistrate Judge, or the Judges' staff, nor should Petitioner ask family members or friends to do so.

Petitioner must comply with, to the extent applicable, the Federal Rules of Civil Procedure, the Local Rules of this Court, and any Order of the Court. Failure to comply with the Rules or Court Orders may result in dismissal of this case or other sanctions. Fed. R. Civ. P. 41(b); *see, also, Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir.1994). Petitioner is obligated to keep the Court advised of any changes in Petitioner's mailing address. Failure to keep the Court informed of Petitioner's correct address may also result in dismissal of the case or other sanctions. D.N.M. LR-Civ. 83.6.

**IT IS ORDERED:**

(1) Petitioner Jay McClain Jr.'s Request for Telephonic Hearing (Doc. 3) is **DENIED** as premature; and

(2) this Case Management Order shall govern proceedings in this case until further order of the Court.

A handwritten signature in black ink, appearing to read "Kevin Smeagala". The signature is written in a cursive, flowing style.

---

UNITED STATES MAGISTRATE JUDGE